

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 214 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DEVIDAS BABULAL MODI

Versus

PUNJAB NATIONAL BANK

Appearance:

MR AJ PATEL for Petitioner

MR CU SHELAT for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 10/02/99

ORAL JUDGEMENT

This Revision Application under section 115 of C.P.C. is directed against the judgment dated 31.1.1998 passed by the Joint District Judge, Ahmedabad (Rural) whereby the learned Judge dismissed the appeal and confirmed the order passed by the 8th Joint Civil Judge (S.D.), Ahmedabad (Rural), rejecting the application for interim injunction below Exh.5 in R.C.S. No.80/97.

2. The petitioner-plaintiff filed suit for permanent injunction restraining the defendants from entering into

the disputed Bungalow described in para 2 of the plaint and from taking the said bungalow and the moveable properties lying in it in the attachment and further restraining them from executing the order passed by the Presiding Officer appointed under the Recovery of Debts due to Banks & Financial Institutions Act, 1993 (for short, 'the Act of 1993') passed on 9.12.1998.

3. It appears that the Civil Judge (SD) passed a decree against the petitioner-plaintiff Babubhai Ujamshibhai Modi for a sum of Rs.16,91,073.23 with the interest at the rate of 15% per annum. The Presiding Officer of D.R.D. issued Recovery Certificate under section 19(7) of the Act against the petitioner-plaintiff for the aforesaid amount as decreed by the learned Civil Judge (SD). The Presiding Officer, D.R.D. also directed that the amount shall be recovered from the properties of the plaintiff as well as the estate of the deceased Babubhai Ujamshibhai Modi (the borrower). This led to the filing of the suit by the present plaintiff. The say of the petitioner-plaintiff is that his father Ujamshibhai Modi died on 3.1.1992 and has not received any property of the deceased father. It is also averred that the petitioner had separated from the father before his death and the properties of his father were partitioned by Memorandum of Partition dated 13.12.1975. It is also averred that as per the said partition, the suit property had fallen to the share of the petitioner. The trial court rejected the application for interim injunction which has been confirmed by the Appellate Court.

4. It is contended by Mr A J Patel, learned Advocate appearing for the petitioner that the Court below has committed jurisdictional error in holding that the properties of the petitioner obtained by him before the partition and separated from his father could be used for recovery of the debts the petitioner incurred by his father. The learned Advocate submits that the post-partition debts cannot be recovered from the property of the petitioner. He has relied upon a decision of the Apex Court in the case of Pannalal & Anr. vs. Narayani, reported in AIR 1952 SC 170. The contention is being opposed by Mr C U Shelat, learned Advocate appearing for the respondent-Bank. It will not be appropriate for me to pronounce any decision of the said contested issue as the main suit is still pending.

5. Considering all facts of the case, ends of justice would meet if a direction is given that it will be open for the borrower to recover the decretal amount

from any of the property of the father of the plaintiff except the suit bungalow. However, the plaintiff shall file an undertaking that during the pendency of the suit, he shall not transfer or alienate or sell the suit bungalow. The undertaking to the said effect shall be filed within a period of three weeks from today before the trial court.

6. In view of the above, the Revision Application is partly allowed to the aforesaid extent. Considering all facts and circumstances of the case, the trial court is directed to expedite the disposal of the suit. Rule partly made absolute to the aforesaid extent.

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msp.